



Northern Alaska Environmental Center

Conservation's Northern Voice

June 10, 2008

VIA ELECTRONIC AND CERTIFIED MAIL

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Re: Shell Offshore Inc. OCS Air Permit – Kulluk Drilling Operations
EPA Permit No: R10OCS-AK-07-01 (Revised)

Dear Mr. Mahar:

On May 22, 2008, you distributed an email regarding the above referenced permitting decision, which indicated that on May 6, 2008, more than a month after the close of the public comment period for the proposed permit on April 1, 2008, EPA had received information from Shell Offshore, Inc. (Shell). EPA also indicated that the “information submittal has been entered into the record,” despite its having been tardily submitted long after the close of the public comment period.

This letter is submitted on behalf of the **Northern Alaska Environmental Center, Alaska Wilderness League, Center for Biological Diversity, Native Village of Point Hope, Natural Resources Defense Council, Pacific Environment, Oceana, Resisting Environmental Destruction on Indigenous Lands (REDOIL), and Sierra Club**. Our organizations are dedicated to protecting the ecological and cultural integrity of Alaska’s wild arctic lands and waters, clean air and clean water, and curbing global warming.

We hereby object to EPA’s decision to accept information submitted by Shell after the close of the public comment period. We formally request that this information be omitted from the record, as required under EPA’s regulations. *See* 40 C.F.R. §§ 124.13 (requiring submission of all reasonably available arguments by a permit applicant before the close of the public comment period) 124.17-124.18 (providing that the administrative record may include only the agency’s own responses to comments). In the alternative, if EPA elects to include this information in the record for its permitting decision, we request that the agency reopen the public comment period for 60 days, pursuant to 40 C.F.R. § 124.14(b), to afford the public a fair opportunity to respond to the factual information and arguments proffered by Shell well after the close of the public comment period and purporting to provide justification for the agency’s permitting decision. This permitting decision raises novel issues that the agency has not previously addressed in the context of the Alaskan OCS, and the agency should

ensure that it has afforded the public a chance to present the full breadth of available information before committing to a decision based on the arguments and information presented by Shell outside of the public comment period.

If EPA insists on including Shell's submission in the record and deprives the public of an opportunity to comment thereon, it should, at the very least consider the information contained in this letter as well as the information recently submitted by the North Slope Borough and should likewise include that information in the administrative record for the permitting decision, pursuant to 40 C.F.R. § 124.17(b). That information, including the affidavit of Ms. Susan Harvey, refutes the misleading information contained in the memorandum of Mr. Smith that Shell submitted in an effort to justify and defend EPA's proposed permitting decision. We fully endorse the information submitted by the North Slope Borough and incorporate it fully herein by reference. In order to make a truly informed decision, EPA should consider the information submitted by the Borough and, accordingly, include it in the administrative record for the permit. It would be patently arbitrary for EPA not to consider such information, when contrasted with its apparent choice to consider the information tardily submitted by Shell.

Finally, even if EPA elects to include Shell's late-submitted information in the record, and even if it accepts the arguments of Mr. Smith that the operations at the three well sites that Shell has identified with respect to its planned 2008 drilling activities are not interdependent, EPA should refuse to issue a multi-year minor source permit to Shell. Shell's site-specific information pertaining to the purported lack of interdependence between well sites relates only to the three well sites Shell has identified for 2008. EPA would need additional site-specific information for future well sites to justify any such conclusion with respect to operations in future years, and, assuming there is any factual basis to justify a determination that future well sites are not interdependent, Shell could easily provide such information when the time comes, as the submission of Mr. Smith demonstrates. Moreover, we note that Shell has requested authorization from the National Marine Fisheries Service to conduct drilling operations at an indeterminate number additional, unspecified locations beyond just the three well sites Shell identified in its submissions to EPA. *See* 73 Fed. Reg. at 31,817 ("given the locations of open water conditions during the 2008 [season] and permit/authorization stipulations, [Shell] may elect to re-prioritize well locations on one, or more of their OCS leases Re-prioritizing of drilling prospects due to ice conditions may cause drilling to occur at other Beaufort OCS leases held by [Shell], but only those that have been pre-cleared by MMS."). Thus, if EPA elects to issue a minor source permit based on the site-specific information submitted by Shell, that permit should be limited to a one-year duration and should only authorize operations at the three proposed well sites for which Shell has provided actual site-specific data.

Thank you for considering our input.

Sincerely,



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Letter to EPA re Shell's late submitted information

Shell Offshore Inc. OCS Air Permit – Kulluk Drilling Operations

EPA Permit No: R10OCS-AK-07-01 (Revised)

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